

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JAMES AND JOAN J. CHRISTODOLOU	:	DETERMINATION DTA NO. 815088
	:	
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1986, 1987 and 1988.	:	

Petitioners, James Christodolou and Joan J. Christodolou, 405 West Sycamore Street, Rome, New York 13440, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1986, 1987 and 1988.

The Division of Taxation, by its representative Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel) brought a motion for summary determination pursuant to section 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioners filed a response to the motion on October 30, 1996, which date began the period for issuance of this determination. After due consideration of the pleadings, motion papers and exhibits, Jean Corigliano, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioners' claim for refund of personal income taxes paid for the years 1986, 1987 and 1988 should be granted pursuant to the special refund authority found in Tax Law § 697(d).

FINDINGS OF FACT

1. Petitioners, James Christodolou and Joan J. Christodolou¹, filed a petition for review of a denial of claims for refund of New York State personal income taxes for the years 1986,

¹Joan J. Christodolou is included as a petitioner because she filed joint returns with her husband for each of the years in issue. The issues raised in the petition relate only to the income of Mr. Christodolou; therefore, reference made from here on to "petitioner" may be understood to be references to Mr. Christodolou.

1987 and 1988. The Division of Taxation ("Division") issued a Notice of Disallowance denying refunds on the ground that the refund claims were not filed within the period of limitation set forth at Tax Law § 687(a).

2. Petitioner timely filed New York State personal income tax returns for the years in issue. Petitioner filed a 1986 personal income tax return on or before April 15, 1987, filed a 1987 personal income tax return on or before April 15, 1988 and filed a 1988 personal income tax return on or before April 15, 1989.

3. Petitioner retired from the Federal Aviation Administration in 1983. During the tax years in issue, he paid New York State personal income tax on his Federal pension income.

4. In April 1989, petitioner filed what he refers to as a "Protective Claim" through H&R Block. This was a claim for refund of New York State personal income taxes paid for 1985. It was petitioner's understanding that this claim would not only be valid for 1985 but would also serve as a valid claim for later years.

5. The basis for petitioner's refund claim was provided by the United States Supreme Court decision in Davis v. Michigan Dept. of Treasury (489 US 803, 103 L Ed 2d 891) which invalidated a Michigan statute exempting state pensions but not Federal pensions from income tax. The Court decided the Davis case on March 28, 1989. Shortly thereafter, many Federal pensioners filed claims for refund of New York State income taxes paid on Federal pensions. Following the Davis decision, the New York State Legislature amended the Tax Law to exclude Federal pensions, as well as New York State pensions, from taxation; however, the amended law applies only to Federal pensions received in taxable years beginning on or after January 31, 1989 (L 1989, ch 664, §§ 1, 2, effective July 21, 1989).

6. The Division originally took the position that refund claims could not be issued for years prior to 1989, and it informed petitioner of that position. Following a series of court cases concerning the retroactive effect of the Davis decision, the Division reversed its policy and began issuing refunds to all Federal pensioners who (1) had paid New York State income tax on Federal benefits and (2) had filed timely claims for refund.

7. In June 1995, the Division issued a refund to petitioner for 1985 but informed him that no refund could be issued for later years because he had not filed separate refund claims for those years. Petitioner then filed separate claims for refund of income taxes for 1986, 1987 and 1988.

8. In September 1995, the Division issued to petitioner a Notice of Disallowance for the subject years denying petitioner's claims on the ground that they were not filed within the statutory period of limitation.

9. Following a conciliation conference, the Division issued a Conciliation Order, dated March 29, 1996, sustaining the Notice of Disallowance.

SUMMARY THE OF PARTIES' POSITIONS

10. Petitioner argues that the Division should have exercised its special refund authority (Tax Law 697[d]) and granted him refunds for the subject years. He contends that where a taxing statute has been found to be unconstitutional it would be reasonable for the Commissioner to grant refunds under the authority of section 697(d).

11. The Division did not directly address petitioner's legal claim under Tax Law § 697(d); rather, it continues to assert that petitioner's claims for refund are barred by Tax Law § 687(a).

CONCLUSIONS OF LAW

A. To obtain summary determination, the moving party must submit an affidavit, made by a person having knowledge of the facts, a copy of the pleadings and other available proof. The documents must show that there is no material issue of fact and that the facts mandate a determination in the moving party's favor (20 NYCRR 3000.9[b][1]). Petitioners and the Division agree that petitioners' claims for refund for the years 1986, 1987 and 1988 were not filed until 1995. As a result, there are no material issues of fact in dispute in this proceeding, and a determination may be issued, as a matter of law, in favor of any party.

B. Before addressing petitioner's arguments, I will briefly summarize the circumstances surrounding New York State's taxation of Federal pension benefits. When petitioner filed

personal income tax returns for the years 1985 through 1988, New York State's Tax Law required taxpayers to include Federal pension benefits in their calculation of New York State taxable income. Tax Law § 612(c)(former [3]) allowed State pensioners to exclude their pension income from the calculation of New York adjusted gross income, but there was no equivalent provision that allowed Federal pensioners to exclude their pension payments from tax. At that time, approximately 24 states had similar tax or pension statutes (see, Duffy v. Wetzler, 148 Misc 2d 459, 555 NYS2d 543, 544, affd as mod, 174 AD2d 253, 579 NYS2d 684, appeal dismissed 79 NY2d 976, 583 NYS2d 190, appeal dismissed 80 NY2d 890, 587 NYS2d 900, revd 509 US 917, 125 L Ed 2d 716). In effect, these statutes were invalidated by the Davis decision. Following the Davis decision, Federal pensioners in several states, including New York, sought refunds of taxes basing their claims on the Davis opinion. The state courts were then called upon to determine whether the holding in Davis should be given retroactive application to tax years prior to the date of the decision, March 1989.

The issue of the retroactivity of the Davis holding was addressed in New York State in the case of Duffy v. Wetzler (supra). There, the Appellate Division, Second Department, held that the Davis decision applied prospectively only and did not require a refund of tax for years before the issuance of the Davis decision (Duffy v. Wetzler, 174 AD2d 253, 579 NYS2d 684).

In a later case (Harper v. Virginia Dept. of Taxation, 509 US 86, 125 L Ed 2d 74, 88), the Supreme Court held that the ruling in Davis must be applied retroactively; however, the Court did not award a refund to the Harper petitioners stating that "federal law does not necessarily entitle them to a refund." Rather, the Court restated the basic principle that the United States Constitution requires "relief consistent with due process" (id.). It remanded the case to the Virginia Supreme Court to determine whether Virginia law afforded petitioners a remedy consistent with the minimum Federal requirements outlined by the Court in its decision (id., 125 L Ed 2d at 89). At about the same time, the Court granted certiori and vacated the judgement of the Appellate Division in Duffy v. Wetzler for further consideration in light of the

opinion in Harper (Duffy v. Wetzler, 509 US 917, 125 L Ed 2d 716, supra). The Supreme Court's decision in Duffy v. Wetzler was issued on June 28, 1993 (id.).

On remand, the Appellate Division, Second Department, set forth the Division's position on allowing refunds for tax years prior to 1989 as follows:

"The State of New York decided to 'pay full refunds plus interest to the approximately 10,000 federal retirees who paid State income taxes on their federal pensions prior to 1989 pursuant to tax provisions that were later held to be unconstitutional under Davis [and] . . . Harper . . . and who have filed timely administrative claims for refunds for those taxes with the Department of Taxation and Finance'" (Duffy v. Wetzler, 207 AD2d 375, 616 NYS 2d 48, 50).

C. The Division denied petitioner's refund claims for 1986, 1987 and 1988 on the sole ground that timely claims for refund were not filed. The provision relied on by the Division, Tax Law § 687(a), states:

"Claim for credit or refund of an overpayment of income tax shall be filed . . . within three years from the time the return was filed or two years from the time the tax was paid . . . or, if no return was filed, within two years from the time the tax was paid."

Petitioner does not claim that he filed refund claims within the statutory period of limitation; rather, he argues that the Division should exercise the special refund authority of Tax Law § 697(d). That provision states:

"Special refund authority.--Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller."

While the refund authority granted by Tax Law § 697(d) is discretionary, it must be shown that the moneys at issue have been erroneously or illegally collected or paid by the taxpayer under a mistake of facts (Matter of Fiduciary Trust Co. v. State Tax Commn., 120 AD2d 848, 502 NYS2d 119). The decision of the Tax Appeals Tribunal in Matter of Mackey (Tax Appeals Tribunal, March 23, 1989), succinctly outlines the relevant standard.

"A mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (54 Am Jur 2d Mistake, Accident or Surprise §4; Wendell Foundation v. Moredall Realty Corp., 176 Misc 1006, 1009). A mistake of law, on the other hand, has been defined as acquaintance with the existence or

nonexistence of facts, but ignorance of the legal consequences following from the facts (54 Am Jur 2d Mistake, Accident or Surprise §8; Wendell Foundation v. Moredall Realty Corp., supra)."

In the present case, no taxes were paid by petitioner under a mistake of fact. Petitioner properly paid New York State personal income tax on Federal pension benefits received in the years 1986 through 1988. The issue of whether New York State could provide its pensioners with a tax exclusion without providing the same exclusion to Federal pensioners was a question of law which was resolved by the March 28, 1989 decision of the Supreme Court in Davis v. Michigan Dept. of Treasury (supra). Whether the holding in Davis must be applied retroactively to tax years before the decision was issued is also a legal question, and it was finally resolved in the case of Harper v. Virginia Dept. of Taxation (supra). Since petitioner has not shown that taxes were paid under a mistake of fact, there is no basis for requiring the Commissioner to exercise the special refund authority of Tax Law § 697(d).

D. The motion of the Division of Taxation for summary determination in its favor is granted, and the petition of James and Joan J. Christodolou is denied.

DATED: Troy, New York
January 16, 1997

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE